REMARKS

Reconsideration of the above-identified application in view of the foregoing amendments and following remarks is respectfully requested.

A. Amendment to the Specification

By this paper the specification is amended to delete "S14" and to recite "S16" on page 8, line 25. This amendment is believed to fully resolve the objection of the January 29, 2007 Office Action to the specification at page 3.

B. Restriction Requirement

As noted in the Office Action, during a telephone conversation with the Examiner on January 9, 2007, Applicant's attorney provisionally elected to prosecute the invention of species 1, claims 1-14, without traverse. Applicant hereby affirms this election. Applicant reserves the right to prosecute the invention of claims 15-27 in a divisional application.

C. Explanation of Amendments

Claims 1 and 7 are amended to recite "a database formed by statistically processing." These amendments are made solely to clarify the present invention, not for any reason related to patentability (i.e., §§ 102 or 103). Support for these amendments may be found through out the specification as originally filed, including at least at page 7, lines 16-23.

The office action rejected claims 13 and 14 under U.S.C. § 101 as allegedly being directed to non-statutory subject matter. [01/29/2007 Office Action at p. 3]. Claim 13 has been cancelled and Claim 14 has been amended to recite the subject matter in independent format.

The office action also rejected claims 1-3, 7-9, 13 and 14 under 35 U.S.C. § 102(b) as allegedly being anticipated by U.S. Patent No. 5,400,110 to Soshi ("Soshi").

[01/29/2007 Office Action at p. 4]. Lastly, the office action rejected claims 4-6 and 10-12 under 35 U.S.C. § 103(a) as allegedly being unpatentable over Soshi in view of U.S. Patent No. 7,009,641 to Takahashi ("Takahashi"). [01/29/2007 Office Action at p. 8].

D. Claims 1-12 and 14 are Patentably Distinct from the Cited References

The rejections of claims 1-12 and 14 are respectfully traversed. As explained more fully below, the requirements for such rejections are not met.

Applicant's claim 1 recites:

> 1. "An image sensing apparatus comprising:
>
> a memory which stores a database formed by statistically processing information on a photographing frequency in association with object distance information and brightness information;
>
> an acquisition device which acquires an object brightness value on the basis of image information sensed by an image sensing device; and
>
> a control device which refers to said memory to detect an object distance having the highest photographing frequency among object distances corresponding to the acquired object brightness value, and controls image sensing operation on the basis of the detected object distance information."

The office action asserts that Soshi teaches an image sensing apparatus comprising a control device as recited in Applicant's claim 1. [01/29/2007 Office Action at p. 4]. To support this assertion, the office action cites Soshi at figure 1, element 24; column 3, lines 44-47; and column 4, line 67 to column 5, line 11. [See 01/29/2007 Office Action at p. 4]. The cited texts are portions of Soshi's specification and read as follows:

> "The control circuit **24** is usually comprised of a microcomputer which generically controls the whole operation of the camera in accordance with the program stored in internal memory."

* * *

> "When the object distance and luminance measurement switch SWS is turned ON, the control circuit **24** starts metering the object luminance to obtain optimum exposure factors (diaphragm value Av and shutter speed Tv) in accordance with a predetermined program and receives the focal length data f therein from the lens-position detecting means **14** (**S61**).
>
> After these data are input and memorized, the control circuit **24** includes arithmetic operation means **24'** which calculates an object distance Dx in accordance with the focal length f and the diaphragm value Av, so that the two object distances **D1** and **D2** fall within the depth of field (**S63**)."

The above referenced text describes an image sensing apparatus with a sensor to detect the brightness (or luminance) of an object and a sensor to detect determine the distance of an object to be photographed. When a photographer using the image sensing apparatus determines the composition of a photograph, the photographer then "must direct the camera to one of the closest and farthest objects" to obtain object distance and luminance measurements for those two objects. [See Soshi, col. 4, lines 26-58 (explaining focusing operation)]. The object distance and luminance measurements for the two objects are stored in memory. [Soshi, col. 4, lines 32-34 and 51-53]. The image sensing apparatus uses the measurements for the two objects to be photographed to control the focus operation of the camera. [See Soshi, col. 5, lines 6-64 (description of calculations based on numerical formula)]. In fact, **only** the distance and luminance **of the objects to be photographed are used** as a basis for controlling the focus operation of the image sensing apparatus. Soshi does not mention using distance or luminance "information on a photographing frequency" to control its focus operation. In fact, Soshi does not mention any kind of "information on a photographing frequency." Therefore, Soshi does not teach, disclose or suggests "a control device which refers to said memory to detect an object distance having the highest photographing frequency among object distances corresponding to the acquired object brightness value, and controls image sensing operation on the basis of the detected object distance information" as recited in Applicant's claim 1.

The office action does not contend that Takahashi teaches, discloses or suggests "a control device which refers to said memory to detect an object distance having the highest photographing frequency among object distances corresponding to the acquired object brightness value, and controls image sensing operation on the basis of the detected object distance information" as recited in Applicant's claim 1. Applicant's own review of Takahashi confirms that it do not teach, disclose or suggest "a control device which refers to said memory to detect an object distance having the highest photographing frequency among object distances corresponding to the acquired object brightness value, and controls image sensing operation on the basis of the detected object distance information" as recited in Applicant's claim 1.

Accordingly, as Applicant cannot find the "control device" of claim 1 in Soshi or Takahashi at least independent claims 1 and its dependent claims 2-6 are respectfully asserted to be in condition for allowance. For at least similar reasons, independent claim 7, its dependent claims 8-12 and claim 14 also are respectfully asserted to be in condition for allowance.

Applicant has chosen in the interest of expediting prosecution of this patent application to distinguish the cited documents from the pending claims as set forth above. These statements should not be regarded in any way as admissions that the cited documents are, in fact, prior art. Likewise, Applicant has chosen not to swear behind the documents cited by the office action or to otherwise submit evidence to traverse the rejection at this time. Applicant, however, reserves the right, as provided by 37 C.F.R. §§ 1.131 and 1.132, to do so in the future as appropriate. Finally, Applicant has not specifically addressed the rejections of the dependent claims. Applicant respectfully submits that the independent claims, from which they depend, are in condition for allowance as set forth above. Accordingly, the dependent claims also are in condition for allowance. Applicant, however, reserves the right to address such rejections of the dependent claims in the future as appropriate.

CONCLUSION

For the above-stated reasons, this application is respectfully asserted to be in condition for allowance. An early and favorable examination on the merits is requested. In the event that a telephone conference would facilitate the examination of this application in any way, the Examiner is invited to contact the undersigned at the number provided.

THE COMMISSIONER IS HEREBY AUTHORIZED TO CHARGE ANY ADDITIONAL FEES WHICH MAY BE REQUIRED FOR THE TIMELY CONSIDERATION OF THIS AMENDMENT UNDER 37 C.F.R. §§ 1.16 AND 1.17, OR CREDIT ANY OVERPAYMENT TO DEPOSIT ACCOUNT NO. 13-4500, ORDER NO. 1232-5173.

Respectfully submitted,
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Dated: April 30, 2007

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